

REMARKS

Claims 1-28 are pending in this application. Claims 1 and 16 have been amended. The amendment to claim 1 is supported in the specification at page 9, lines 14-20 and at page 19, lines 22-30. The amendment to claim 16 is supported in the specification at page 2, line 26, at page 4, line 4 and at page 19, lines 22-30. No new matter has been added to the application by any of the foregoing amendments.

I. Section 102(b) Rejections

At pages 2-3 of the Office Action, claims 1-3, 7-10, and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,258,915 to Sellge, Jr. et al. (the "Sellge patent"). For brevity, the reasons for rejection are not repeated herein but reference is made to the Office Action.

In order to support an anticipation rejection under Section 102(b), each and every element of the claimed invention must be found within the four corners of a single document cited by the Examiner to anticipate. Hybritech Inc. v. Monoclonal Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986).

Claim 1, as amended, is directed to an exercise device comprising an elongate, substantially upright weight-bearing portion for supporting the weight of a user during exercising, said weight-bearing portion including a transverse section and two upstanding sections extending from the transverse section at about a ninety-degree angle therefrom, the transverse section including a gripping portion extending across a top of said device, said weight-bearing portion having an open bottom and generally lying in a first plane. The exercise device of claim 1 also comprises a pair of ground-engaging feet, each positioned on one of the two upstanding sections, said feet extending outwardly from said plane to stabilize said upright weight-bearing portion without interfering with said open bottom, the feet being spaced apart to permit the positioning of a user between the feet and so as to be clear of interference from the feet, and the feet and weight-bearing portion being configured so that the mass of the device is generally balanced about said first plane. The transverse section and upstanding sections are substantially rigid so as not to yield perceptibly to a user during exercise. The user of the device may grip the gripping portion clear of interference from the feet.

The Sellge patent teaches a portable and flexible support structure. The flexible structure has a flexible horizontal member designed to deflect and deform in response to the

application of a force. Feet are positioned below the horizontal member and connected thereto by uprights for supporting the flexing structure. The uprights are each connected to the horizontal member to form an angle of less than 90° with the horizontal member.

The Sellge patent does not teach or suggest a transverse section and two upstanding sections extending from the transverse section at about a ninety-degree angle, such as is set forth in amended claim 1. Further, the Sellge patent does not teach or suggest a transverse section and two upstanding sections that are substantially rigid so as not to yield perceptibly to a user during exercise, such as is set forth in amended claim 1. Thus, the § 102(b) rejection based upon the teachings of the Sellge patent is unsupported because it fails to teach each and every element of the claimed invention. The object of the Sellge patent is to provide a flexible support structure not the generally rigid structure now claimed in independent claim 1.

Claims 2, 3, 7-10 and 15 depend either directly or indirectly from and add further limitations to independent claim 1. Therefore, because claims 2, 3, 7-10 and 15 include the limitations of claim 1, the § 102(b) rejection based upon the teachings of the Sellge patent is also unsupported for these claims because, at a minimum, it fails to teach each and every element set forth in independent claim 1, as outlined previously.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. §102(b) of claims 1-3, 7-10 and 15 be reconsidered and withdrawn.

At pages 3-4 of the Office Action, claims 1, 4 and 5 stand rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,033,737 to Moye (the "Moye patent"). For brevity, the reasons for rejection are not repeated herein but reference is made to the Office Action.

The Moye patent teaches an adjustable hurdle for use on a running track that is height-adjustable and may be weighted and/or vertically adjusted for adjusting the resistance to "pullover" forces when the hurdle is struck by a runner.

The Moye patent does not teach or suggest a weight-bearing portion that supports the weight of a user, such as is set forth in amended claim 1. In contrast, the Moye patent discloses a structure that is not in any way intended to bear the weight of the user. The adjustable hurdle is intended to tip over once sufficient force is applied. Accordingly, the Moye patent also does not teach or suggest a transverse section and upstanding sections that are substantially rigid so as not to yield perceptibly to a user during exercise, such as is set forth in

amended claim 1. Thus, the § 102(b) rejection based upon the teachings of the Moye patent is unsupported because it fails to teach each and every element of the claimed invention.

Claims 4 and 5 depend either directly or indirectly from and add further limitations to independent claim 1. Therefore, because claims 4 and 5 include the limitations of claim 1, the § 102(b) rejection based upon the teachings of the Moye patent is also unsupported for these claims.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. §102(b) of claims 1, 4 and 5 be reconsidered and withdrawn.

II Section 103(a) Rejections

At page 4 of the Office Action, claims 11-14, 16-19, and 21-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Sellge patent.

When making a rejection under 35 U.S.C. § 103, the Examiner has the burden of establishing a prima facie case of obviousness. In re Fritch, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The Examiner can satisfy this burden only by showing an objective teaching of all of the claim limitations in the state of the art, or knowledge generally available to one of ordinary skill in the art, which would lead an individual to combine the relevant teachings and/or the knowledge within the state of the art in the manner suggested by the Examiner. Id.; In re Fine, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); In re Royka, 180 U.S.P.Q. 580 (CCPA 1974).

A statement that modifications of the prior art meet the claimed invention without a finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated that person to make the claimed invention is improper. See MPEP §2143.01. Applicant therefore traverses the assertion that it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the claimed inventions of these rejected claims without citing prior art to make such rejections. See MPEP §2144.03.

The Office Action contends that the Sellge patent teaches the claimed invention in claims 11-14, 16-19 and 21-28, except that the Sellge patent fails to disclose the height of the gripping portion with respect to the floor, and thereafter, refers to general assumptions as to what would have been obvious to one of ordinary skill in the art for teaching not disclosed in the Sellge patent. As stated above, Applicant traverses such assumptions of what would have been obvious with respect to limitations not taught in the Sellge patent.

Moreover, however, the Sellge patent does not disclose or even remotely suggest the exercise device as set forth in the present amended claims. As discussed previously, the Sellge patent does not teach or suggest all the limitations of independent claim 1. Applicants further submit that the previously discussed limitations not taught or suggested but the Sellge patent would not have been obvious over the Sellge patent taken alone or in combination with the other prior art of record. Claims 11-14 depend indirectly from, and add further limitations to, independent claim 1. Therefore, because dependent claims 11-14 include the limitations of independent claim 1, the § 103(a) rejection based upon the teachings of the Sellge patent is also unsupported for these claims. Accordingly, Applicant requests reconsideration and withdrawal of the § 103(a) rejection of claims 11-14.

Claim 16, as amended, is directed to exercise devices having a weight-bearing portion that is substantially rigid so as not to yield perceptibly to a user during exercise. The Sellge patent does not teach or suggest such a rigid structure as recited in independent claim 16. In contrast, as discussed previously, the Sellge patent discloses and specifically teaches a flexible support structure designed to deflect and deform in response to the application of a force from a user. Thus, the § 103(a) rejection based upon the teachings of the Sellge patent is unsupported because it fails to teach each and every element set forth in claim 16.

Claims 17-19 and 21-28 depend either directly or indirectly from and add further limitations to independent claim 16. Therefore, because claims 17-19 and 21-28 include the limitations of claim 16, the § 103(a) rejection based upon the teachings of the Sellge patent is also unsupported for these claims.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. §103(a) of claims 16-19 and 21-28 be reconsidered and withdrawn.

At pages 4 and 5 in the Office Action, claims 6, 16 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Moye patent.

As discussed previously, the Moye patent does not teach or suggest an exercise device as recited in independent claim 1, nor would the limitations of independent 1 have been obvious over the Moye patent for the reasons detailed previously. Claim 6 depends indirectly from and adds further limitations to independent claim 1. Concerning independent claim 6, which includes the limitations of independent claim 1, the Moye patent does not teach or suggest a weight-bearing portion that supports the weight of a user and which does not yield perceptibly to a user during exercise, nor does it teach or suggest the mass of the weight bearing portion

being generally balanced about a first plane. Thus, the § 103(a) rejection of claims based upon the teachings of the Moye patent is unsupported because it fails to teach each and every element set forth in independent claim 16.

To amplify on the foregoing, independent claim 16, as amended, relates exercise devices having upright weight-bearing portions lying in a first plane for supporting the weight of a user during exercise. The exercise devices also have feet configured with the weight-bearing portion so that the mass of the device is generally balanced about the first plane. The Moye patent does not teach or suggest at least these limitations. Thus, the § 103(a) rejection of claim 16 based upon the teachings of the Moye patent is unsupported because it fails to teach each and every element of the claimed invention.

Claim 20 depends directly from, and adds further limitations to, independent claim 16. Therefore, because claim 20 includes the limitations of claim 16, the § 103(a) rejection based upon the teachings of the Moye patent is also unsupported for claim 20.

Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) of claims 6, 16 and 20 be reconsidered and withdrawn.

It is further apparent that neither of the cited references, whether considered alone or in combination, teaches or even remotely suggests the claimed invention.

CONCLUSION

For all of the foregoing reasons, Applicant believes that pending claims 1-28 are patentable over the cited prior art and in condition for allowance. Accordingly, reconsideration of the rejections and allowance of pending claims 1-28 are respectfully requested.

Application No. 10/799,820
Paper Dated August 18, 2005
In Reply to USPTO Correspondence of April 18, 2005
Attorney Docket No. 4316-043718

The Commissioner is hereby authorized to charge any additional fees as set forth in 37 C.F.R. §§ 1.16 and 1.17 which may be required, or to credit any overpayment to Deposit Account No. 23-0650.

Respectfully submitted,

THE WEBB LAW FIRM

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